



## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Part 585

#### RIN 3141-AA75

#### Appeals to the Commission

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) amends its regulations regarding appeal before the Commission to include a settlement procedure and to limit the motions that may be filed during an appeal before the Commission.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Michael Hoenig, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240. Telephone: 202-632-7003.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. IGRA, in several instances, requires that the Commission provide an opportunity for a hearing on proposed fines, temporary closure orders, and removals of a certificate of self-regulation. Also through regulatory action, the Commission has afforded appeals for notices of violations, modified and voided management contracts, and notices of late fees and late fee assessments. As to all these areas, part 585 of NIGC regulations offers appeals to the Commission on written submissions.

The Commission comprehensively updated the appeals regulations in 2012, consolidating them in one subchapter. (77 FR 58941-01). This rule augments the appeals regulations by inserting a comprehensive settlement procedure for appeals under part 585, rectifying its absence in the current regulations, and limits the motions permitted during an appeal.

## II. Development of the Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the appeals regulations in part 585. Prior to consultation, the Commission sent another Notice of Consultation, dated September 13, 2021, and released a proposed discussion draft of the regulations for review. The proposed amendments to these regulations were intended to solicit Tribes' views on: 1) the Commission inviting, directing or granting leave to the Chair to file or respond to motions and 2) supplying a settlement procedure for appeals to the Commission on written submissions. The Commission held three virtual consultation sessions in September and October of 2021 to receive tribal input on the possible changes. The Commission reviewed all comments received as part of the consultation process.

Upon reviewing the comments received during the consultation period, the Commission published a notice of proposed rulemaking ("NPRM") on August 10, 2022. 87 FR 48615. The NPRM invited interested parties to participate in the rulemaking process by submitting comments and any supporting data to the NIGC by September 9, 2022.

## III. Review of Public Comments

The Commission received no comments to the proposed rule.

## **Regulatory Matters**

### ***Regulatory Flexibility Act***

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

### ***Small Business Regulatory Enforcement Fairness Act***

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

### ***Unfunded Mandate Reform Act***

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

### ***Takings***

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

### ***Civil Justice Reform***

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### ***National Environmental Policy Act***

The Commission has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

### ***Paperwork Reduction Act***

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0007.

### ***Tribal Consultation***

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC’s consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to, the ability of an Indian tribe to regulate its Indian gaming; an Indian Tribe’s formal relationship with the Commission; or the consideration of the Commission’s trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the written submissions appeal process. Specifically, the Commission sought consultation on whether it should invite, direct, or grant leave to the Chair to file or respond to motions or add a comprehensive settlement procedure. On July 27, 2021, and July 28, 2021, the Commission held two virtual consultations on the proposed changes.

#### **List of Subjects in 25 CFR Part 585**

Administrative practice and procedure, Gambling, Indians-lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 585 as follows:

#### **PART 585—APPEALS TO THE COMMISSION**

1. The authority citation for part 585 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

2. Revise § 585.4(a) to read as follows:

#### **§ 585.4 Are motions permitted?**

(a) Only motions for extension of time under §580.4(f) of this subchapter, motions to supplement the record under §581.5 of this subchapter, motions to intervene under §585.5, and motions for reconsideration under §581.6 of this subchapter, are permitted.

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3. Add § 585.8 to read as follows:

**§ 585.8 What is the process for pursuing settlement in an appeal to the Commission?**

(a) *General.* At any time after the commencement of a proceeding, but before the date scheduled for the Commission to issue a final decision under § 585.7, the parties may jointly move to stay the proceeding for a reasonable time to permit negotiation of a settlement or an agreement disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further proceedings before the Commission regarding the specific matter(s) settled under the agreement; and

(2) That the agreement shall constitute dismissal of the appeal of the specific matter(s) settled, a final order of the Commission, and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Notify the Commission that the parties have reached a full or partial settlement and have agreed to dismissal of all or part of the action, subject to compliance with the terms of the settlement agreement; or

(2) Inform the Commission that an agreement cannot be reached.

(d) *Disposition.* If the parties enter into a full or partial settlement agreement, it shall constitute: full or partial dismissal of the appeal, as applicable; a final order of the Commission; and final agency action.

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**Edward Simermeyer,**

*Chairman.*

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**Jean Hovland,**

*Vice Chair.*

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